George Maxwell who hoped that Government would pay an officer who took a gratuity and lived more than ten years, his full pension after ten years. Even if true, this (in my view) does not alter the fact that the matter is governed solely by a construction of the pension laws.

Mohamed Hashim bin Saad, PW4, retired from the service of what is now Malaysian Railways in 1933 and signed the option form also under the impression (given by the Station Master, Ipoh) that should he survive ten years after his retirement he would draw his full pension. Witness had never read the pension laws.

Haji Laidin bin Haji A. Manaf, PW5, long before he retired (in 1952) as the Director of Lands, Kedah, heard that Government was going to amend the pension law (which he had never read) to provide for the payment of a full pension to an officer who retired with a gratuity, should he live more than ten years after his retirement. Before he retired he signed an option form, thinking that after ten years he would draw full pension.

Mohamed bin Haji Babjee, PW6, also signed the option form thinking that should he live more than ten years after retiring he would draw full pension.

The effect of the evidence led concerning Captain E. A. Staines who retired in 1935 from the Post Office Penang was that he exercised his option and subsequently revoked it before he actually retired. I do not see how this can affect the position because the law clearly says that an option exercised may be revoked before retirement.

In the event, the court declines to make the declarations sought and orders the plaintiffs to pay the defendant's taxed costs.

The court declined to make the declarations.

Solicitor: *Khoo Eng Cheang.*

ATTORNEY-GENERAL OF CEYLON v. REID

[P.C. (Viscount Dilhorne, Lord Hodson, Lord Guest, Lord Upjohn) December 15, 1964 and February 15, 1965]

[Privy Council Appeal No. 18 of 1964]

Criminal Law — Bigamy — Locally domiciled Christian couple — Marriage according to Christian rites — Husband's subsequent conversion to Muslim faith — Husband contracting second marriage notwithstanding earlier subsisting monogamous marriage — Personal law of locally domiciled inhabitants — Right of inhabitants to change their religion and personal law — Recognition of polygamous marriages by law — Abrogation of inherent rights — Ceylon Penal Code, s. 362B.*

* This section corresponds to section 494 of the local Penal Code.

Husband and Wife — Marriage — Polygamous marriage — Muslim law — Christian marriage in Ceylon — Subsequent conversion of husband to Muslim faith — Polygamous marriage during the life time of wife — Validity of.

The respondent, Allen Ellington Reid, who was at all material times domiciled and resident in Ceylon, married Edna Margaret de Witt according to Christian rites at St. Mary's Church, Badulla, Ceylon on September 18, 1933. Both were Christians at the time and they lived together as man and wife until 1957. There were eight children of the marriage.

On June 13, 1959 the respondent and a divorced lady of the name of Fatima Pansy were converted to the Muslim Faith. A month later on July 16, 1959 they were duly married in the District of Colombo by the Registrar of Muslim Marriages under the provisions of the Muslim Marriage and Divorce Act, 1951, notwithstanding that the respondent's earlier marriage was subsisting.

On October 28, 1961 the respondent was prosecuted in the District Court of Colombo for the offence of bigamy under section 362B of the Ceylon Penal Code which so far as relevant is in these terms:—

> "Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

He was duly convicted and sentenced to three months' imprisonment. The respondent's appeal to the Supreme Court of Ceylon was allowed and his conviction quashed. The Attorney-General of Ceylon appealed to the Privy Council.

Before the Judicial Committee of the Privy Council, the sole question was whether the second marriage was void by reason of its taking place during the life of the respondent's first wife. For the Attorney-General it was argued that the respondent had entered into a monogamous marriage and was incapable of re-marrying until it had been legally dissolved or declared void. It was suggested that a person who enters into a monogamous Christian marriage not only enters into a contract but acquires as a result a status, recognised throughout Christendom, that it must be the voluntary union for life of one man and one woman to the exclusion of all others, and that status cannot be changed and no new marriage of any sort can be contracted by either spouse until the marriage is dissolved by a procedure recognised as applicable to monogamous marriages even if both parties change to the Muslim religion.

For the respondent it was argued that the status arising out of a contract of marriage is one to which each country is entitled to attach its own conditions both as to its creation and duration. It was submitted that there was nothing in any statute in Ceylon which rendered the second marriage invalid and nothing in the general law of that country which precluded the husband from altering his personal law by changing his religion and subsequently marrying in accordance with that law, if it recognised polygamy notwithstanding an earlier subsisting monogamous marriage.

Held: Ceylon is a country of many races and creeds and has a number of Marriage Ordinances and Acts. In matrimonial matters there is no one law which applies to all locally domiciled persons; they are governed by their personal laws. A Christian monogamous marriage does not prohibit for all time during the subsistence of that marriage a change of faith and personal law on the part of a husband resident and domiciled there. In such countries there is an inherent right in the inhabitants domiciled to change their religion and personal

law and so to contract a valid polygamous marriage if recognised by the laws of the country notwithstanding an earlier marriage. If such inherent right is to be abrogated it must be done by statute; but there was none in the case of Ceylon and therefore the appeal must fail.

[**Editorial Note:** Reference may be made to *R.* v. *Davendra* (1920) 1 M.C. 51, where a Hindu had married monogamously under the law of Ceylon and upon conversion to Christianity married another woman in Singapore, Bucknill C.J. held that such an act was bigamous and was an offence against the Penal Code. See also *Public Prosecutor* v. *White* [1940] M.L.J. 214, where Horne J. held that a person who enters into a marriage relationship with a woman according to monogamous rites takes upon himself all the obligations springing from a monogamous relationship and acquires by law the status of "husband" in a monogamous marriage and he cannot, whatever his religion may be, during the subsistence of that monogamous marriage marry or go through a legally recognised form of marriage with another woman.]

Cases referred to:—

(1) *Hyde* v. *Hyde*, L.R. 1 P.D. 130.

(2) *Sottomayer* v. *De Barros*, 5 P.D. 94.

(3) *Niboyet* v. *Niboyet*, 4 P.D. 1.

(4) *Baindail* v. *Baindail* [1946] P. 122.

(5) *R. v. Hammersmith Registrar of Marriages* [1917] 1 K.B. 634.

(6) *Skinner* v. *Orde*, 14 Moo.Ind.App. 309.

(7) *Skinner* v. *Skinner* (1898) L.R. 25 Ind.App. 34.

(8) 3 M.H.C.R. vii.

(9) *Emperor* v. *Lazar* (1907) I.L.R. 30 Mad. 550.

(10) *R.* v. *Allen* 1 C.C.R. 367.

(11) *Emperor* v. *Antony*, I.L.R. 33 Mad. 371.

(12) *Re Ram Kumari*, I.L.R. 18 Cal. 264.

(13) *Datta* v. *Sen* [1939] I.L.R. 2 Cal. 12.

(14) *Advocate-General of Bombay* v. *Jimababai* (1915) I.L.R. 41 Bom. 181.

(15) *Khanum* v. *Irani* A.I.R. 1947 272 at p. 273.

(16) *Cheni* v. *Cheni* [1963] 2 W.L.R. 17.

PRIVY COUNCIL.

Mark Littman Q.C. and *M. P. Solomon* for the appellant.

E. F. N. Gratiaen Q.C., *T. O. Kellock* and *M. I. Hamavi Haniffa* for the respondent.

Reasons for Report of the Lords of the Judicial Committee of the Privy Council, delivered the 15th December, 1964.

Lord Upjoin: This is an appeal by the Attorney General of Ceylon, by special leave, from a judgment of the Supreme Court of the Island of Ceylon dated 11th July 1963 whereby the respondent's appeal against his conviction on the 23rd November 1961 by the District Court of Colombo of the offence of bigamy was allowed and the conviction was quashed.

The relevant facts are not in dispute. The respondent married Edna Margaret de Witt according to Christian rites at St. Mary's Church, Badulla on 18th September 1933. Both were Christians at the time and they lived together as man and wife until 1957. There were eight children of the marriage. In May 1957 the wife left the respondent and obtained a maintenance order against him in the Magistrates Court of Colombo.

On the 13th June 1959 the respondent and a divorced lady of the name of Fatima Pansy were converted to the Muslim Faith. A month later on the 16th July 1959 they were duly married in the District of Colombo by the Registrar of Muslim Marriages under the provisions of the Muslim Marriage and Divorce Act, 1951, notwithstandig that the earlier marriage was subsisting.

On the 28th October 1961 the respondent was indicted at the instance of the appellant for the offence of bigamy under section 362B of the Penal Code which so far as relevant is in these terms:—

> "Whoever, having a husband or wife living, marries in any case in which such marriage is void by reason of its taking place during the life of such husband or wife, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

He was duly convicted by Buultjens A.D.J. and sentenced to three months rigorous imprisonment from which judgment, as already mentioned, he successfully appealed.

As the first Christian marriage was under the Marriage Registration Ordinance some reference to that Ordinance is necessary. It contains the following relevant sections:—

> "18. No marriage shall be valid where either of the parties thereto shall have contracted a prior marriage which shall not have been legally dissolved or declared void.
>
> 19. (1) No marriage shall be dissolved during the lifetime of the parties except by judgment of divorce *a vinculo matrimonii* pronounced in some competent court.....
>
> 35. .....
>
> (2) The registrar shall address the parties to the following effect:
>
> 'Be it known unto you, A. B. and C. D., that by the public reception of each other as man and wife in my presence, and the subsequent attestation thereof by signing your name to that effect in the registry book, you become legally married to each other, although no other rite of a civil or religious nature shall take place; and know ye further that the marriage now intended to be contracted cannot be dissolved during your lifetime except by a valid judgment of divorce, and that if either of you before the death of the other shall contract another marriage before the former marriage is thus legally dissolved, you will be guilty of bigamy and be liable to the penalties attached to that offence.'
>
> . . . . . .
>
> 64. In this Ordinance, unless the context otherwise requires —
>
> 'marriage' means any marriage, save and except marriages contracted under and by virtue of the Kandyan

Marriage Ordinance, 1870, or the Kandyan Marriage and Divorce Act, and except marriages contracted between persons professing Islam;"

The Muslim Marriage and Divorce Act applies only to marriages and divorces and to ancillary matters of those inhabitants of Ceylon who are Muslims, but their Lordships do not think it necessary to set out in extenso any of its provisions. It is sufficient to say that it makes full provision for a male Muslim inhabitant of Ceylon to contract more than one marriage provided certain notices are given by the Muslim to the Quazi of the District and by the Quazi to the existing wife or wives.

It is important to state at the outset that this appeal has been argued before their Lordships upon the express admission of counsel for the appellant on the footing that the conversion of the respondent to the Muslim faith on the 13th June 1959 was sincere and genuine notwithstanding doubts expressed in the courts below on this point.

Before dealing with the arguments and examining the authorities it will be convenient to state the matters which are not in controversy between the parties.

1. The respondent was at all material times and is domiciled and resident in Ceylon.

2. The respondent's first marriage remains valid and subsisting notwithstanding the second marriage for there has been no divorce under section 19 of the Marriage Registration Ordinance.

3. The first wife can if she so desires treat the second marriage as an adulterous association by her husband on which she can found a petition for divorce.

4. The second marriage ceremony was duly performed by a proper officer after all due notices had been given and was properly registered under the Muslim Marriage and Divorce Act.

5. Accordingly two of the three essential ingredients in the commission of an offence under section 362B of the Penal Code are satisfied namely the respondent is a person "having a husband or wife living" who "marries".

The sole question therefore is whether the third ingredient, that is whether the second "marriage is void by reason of its taking place during the life of such husband or wife", is satisfied.

Mr. Littman in supporting the view accepted by the learned Acting District Judge does not rely on any statutory enactment which renders the second marriage void for he recognises that having regard to section 64, section 18 of the Marriage Registration Ordinance does not apply to the second Muslim marriage.

Section 18, he concedes, is dealing only with a monogamous marriage but he submits that it reinforces his main argument for it is some indication of the view of the Legislature that the parties to a monogamous marriage are incapable of re-marrying until it has been legally dissolved or declared void.

Mr. Littman's main argument was that a person who enters into a monogamous Christian marriage not only enters into a contract but acquires as a result a status, recognised throughout Christendom; that it must be the voluntary union for life of one man and one woman to the exclusion of all others, and that status cannot be changed and no new marriage of any sort can be contracted by either spouse until the marriage is dissolved by a procedure recognised as applicable to monogamous marriages even if both parties change to the Muslim religion. He relied on such well known cases as *Hyde* v. *Hyde*;[1] *Sottomayer* v. *De Barros*[2] and *Niboyet* v. *Niboyet*.[3] Though a polygamous marriage may for some purposes be recognised as a marriage (see for example *Baindail* v. *Baindail*[4]) he argued with much force that there is no true analogy between a Christian monogamous marriage and a polygamous marriage (see *R.* v. *Hammersmith Registrar of Marriages*.[5] So he submitted that a marriage under the Marriage Registration Ordinance being admittedly monogamous precluded either party during its subsistence from validly entering into another marriage even on a change of faith of both. This argument is strengthened where the change of faith is unilateral on the part of the husband only.

Mr. Littman recognised that Ceylon is a country of many races who profess many creeds; that there are three Acts dealing with marriage in the Island, the Marriages Registration Ordinance (whose long title is the Marriage General Registration Ordinance), The Kandyan Marriage and Divorce Act and the Muslim Marriage and Divorce Act; each Act dealing with different forms, ceremonies and incidents of marriage. But he submitted that none of these Acts lays down any code, and general principles must be applied to see whether by the first marriage the parties acquired a status which rendered them incapable of validly marrying again until the first marriage should be validly dissolved. By the first marriage such a status, he submitted, was acquired which in the absence of dissolution of the first rendered the second marriage ceremony void.

Mr. Littman's argument may be summarised

in the following passage of the judgment of the Acting District Judge:

"Monogamy is an unalterable part of the status of every person who marries under the Marriages (General) Registration Ordinance and a change of religion cannot affect that status. Conversion to the Muslim Faith, even if genuine, cannot enable one who has married under the General Marriages Ordinance to contract a polygamous marriage; such a marriage is void in the lifetime of a former wife."

Mr. Gratiaen's argument for the respondent was that the status arising out of a contract of marriage is one to which each country is entitled to attach its own conditions both as to its creation and duration. *Sottomayer* v. *De Barros, supra,* at 101. He submitted that the question is: what status does the law confer upon parties to a marriage under the Marriage Registration Ordinance? That question, he argued must be answered solely by reference to the relevant statute law. He submitted that if the marital rights of the first wife have been violated, as admittedly they have, then the Marriage Registration Ordinance provides a remedy in section 19, but there is nothing in any statute which renders the second marriage invalid and nothing in the general law of the country which precludes the husband from altering his personal law by changing his religion and subsequently marrying in accordance with that law, if it recognises polygamy, notwithstanding an earlier subsisting monogamous marriage.

Before examining these arguments their Lordships propose to refer to the authorities on this important question. Curiously enough they are few.

In the Judicial Committee of the Privy Council the question seems only to have been answered once and then only in a most tentative way in the case of *Skinner* v. *Orde,*[6] a case relating to the custody of an infant. The mother of the infant, then a widow, went through a marriage in Mahomedan form with a man already the husband in Christian marriage of a living Christian wife. James L.J. delivering the judgment of the Board said "The High Court expressed doubts of the legality of a subsequent Mahomedan marriage which their Lordships think they were well warranted in entertaining".

The subsequent case of *Skinner* v. *Skinner* [7] does not help.

Their Lordships have been informed that the question has never been considered in any reported case in Ceylon.

In India the question has been considered on a section substantially the same as in Ceylon. As long ago as 1866 in 3 M.H.C.R. Appendix vii [8] a Hindu was converted to the Roman Catholic faith and married in accordance with that faith but subsequently reverted to Hinduism, which at that time recognised polygamy, and married again. It was held he was not guilty of bigamy. Holloway J. decided it on the short ground that as Hindu law recognised polygamy a second marriage according to Hindu rites would not be invalid, still less so by reason of the earlier marriage under the Roman Catholic faith which Hindu law would not have recognised.

Innes J. put it on a broader ground. He examined the only relevant statute (9 Geo. IV C. 74 Sec. 70) and pointed out that it only rendered void a second marriage between persons professing the Christian religion at the time of the second marriage, which the accused did not, so that this statute did not operate. He continued:

"If, in becoming a Christian, a man took upon himself the obligation of monogamy i.e. if the Christian religion restricted him, on his embracing it, to one wife, then I should say that if such a person married while still a Christian he could not afterwards throw off his obligations by a mere change of profession. But I do not think that a profession of Christianity *ipso facto* imposes any such obligation although doubtless the tendency of Christianity is adverse to polygamy. Polygamy as an offence exists only by statute; and there is no statute applicable...."

In *Emperor* v. *Lazar* [9] the court relying on decisions where Hindu women had been found guilty of bigamy and on the English case of *Reg.* v. *Allen* [10] declined to follow 3 M.H.C.R. Appendix vii and found the accused guilty of bigamy. It is important to note that the case is distinguishable from that before their Lordships for after referring to the cases of bigamy by Hindu women the court said "We think the same principles must be applied to the present case which is even stronger as here the accused is stated not to have renounced the Christian religion. According to the above decisions it would make no difference if he had."

Three years later in *Emperor* v. *Antony* [11] where the prosecution conceded that the accused had renounced Christianity before the second allegedly bigamous marriage, Abdur Rahim J. followed 3 M.H.C.R. Appendix vii in preference to *Lazar's* case, and without giving reasons, directed the jury to acquit the accused of bigamy.

Apart from the fact that it is distinguishable their Lordships think that the reasoning of the court in *Lazar's* case is open to some criticism. *Reg.* v. *Allen* is not in point for both marriages in that case were monogamous and to follow the cases where Hindu women had been found guilty of bigamy was erroneous for the simple reason that Hindu law and Muslim law have never recognised the validity of a plurality of husbands by women. Therefore Muslim women have been found guilty of bigamy in taking a second husband during the subsistence of a former

marriage because by *the law of their faith* the second marriage was invalid (see *Re Ram Kumari* (12)). Such cases support the argument of the respondent and not that of the appellant.

It appears to their Lordships that as regards India the law is stated with complete accuracy in *Datta* v. *Sen.* (13) That was a succession case but the question for decision was whether an Indian Christian who became converted to Mahomedanism could take a second wife. Henderson J. said at p. 16:

"In connection with marriage the personal law must be applied. In the case of *Advocate-General of Bombay* v. *Jimababai* (14) 196, Beaman J. said this:—

'On conversion to Mahomedanism, converts, no matter what their previous religion may have been, must be taken at that moment to have renounced all their former religious and personal law in so far as the latter flowed from and was inextricably bound up with their religion and to have substituted for it the religion of Mahomed with so much of the personal law as necessarily flows from that religion.'

After his conversion Dukhiram was governed by the Mahomedan law. There can be no question that under that law he was entitled to contract a valid marriage with Alfatanessa. It would, therefore, be a serious thing to say that such a union was a mere adulterous connection.

In our view, as he was entitled to contract this marriage under the Mahomedan law, it must be held to be a valid marriage unless there is some statute which invalidates it. Mr. Sen was not able to put forward any such provision: nor can we find anything either in Act XV of 1872 or in the Indian Divorce Act which would expressly invalidate this marriage. The result is that, in our opinion, Dukhiram did contract a valid marriage with Alfatanessa."

Such authority is entitled to great weight particularly in questions of the validity of marriages celebrated in accordance with the laws of the country where it is celebrated, but does not bind their Lordships, who have to consider this matter for the first time as a matter of decision.

Ceylon is a country of many races, many creeds and has a number of Marriage Ordinances and Acts. The position there, as it appears to their Lordships, is similar to that in the former territories of British India where as was pointed out by Chagla J. in *Khanum* v. *Irani* (15) "in matrimonial matters there is no one law which applies to persons domiciled in British India; they are governed by their personal laws which differ from community to community."

Their Lordships also note with interest the recent observations of Sir Jocelyn Simon P. in *Cheni* v. *Cheni* (16) who said "After all there are no marriages which are not potentially polygamous in the sense that they may be rendered so by a change of domicile and religion on the part of the spouses", which recognises that the obligations assumed upon undertaking a Christian monogamous marriage may not in some circumstances be incapable of change.

Whatever may be the situation in a purely Christian country (as to which their Lordships express no opinion) they cannot agree that in a country such as Ceylon a Christian monogamous marriage prohibits for all time during the subsistence of that marriage a change of faith and of personal law on the part of a husband resident and domiciled there. They agree with the observations of Innes J. almost 100 years ago. In their Lordships' view in such countries there must be an inherent right in the inhabitants domiciled there to change their religion and personal law and so to contract a valid polygamous marriage if recognised by the laws of the country notwithstanding an earlier marriage. If such inherent right is to be abrogated it must be done by statute. Admittedly there is none.

Their Lordships have not overlooked section 35 of the Marriage Registration Ordinance which tends to support Mr. Littman's argument, but the exhortation contained in the registrar's address is no more than a warning and though it may be apt to mislead the ordinary man or woman ignorant of the definition of marriage contained in section 64, it cannot successfully be prayed in aid when considering whether the offence of bigamy has been committed in terms of section 362B of the Penal Code.

It follows that as the Attorney General of Ceylon cannot establish that this second marriage was void by the law of Ceylon by reason of the earlier Christian monogamous marriage the appeal must fail.

For these reasons their Lordships have humbly advised Her Majesty to dismiss the appeal.

Appeal dismissed.

Solicitors: *T. L. Wilson & Co.; Hatchett Jones & Co.*

DAMU JADHAO v. PARAS NATH SINGH

[O.C.J. (Ambrose J.) February 19, 1965]

[Singapore — Suit No. 1153 of 1962]

Moneylending — Promissory note — Unstamped — Inadmissible in evidence — Stamp Ordinance (Cap. 170), ss. 2, 4, 46 and 51.

Evidence — Agreement in writing — Evidence Ordinance (Cap. 4) s. 92 — Applicable only where all terms of contract reduced to form of a document.

The plaintiff brought an action against the defendant to recover a sum of $2,500 alleged to have been lent by the plaintiff to the defendant and to be payable under an agreement in writing signed by the defendant.

Held: (1) the written agreement was a promissory note, and as it was not duly stamped and could not be stamped after execution under section 46 of the Stamp Ordinance, it was inadmissible in evidence and could not be acted upon by the court under section 51 of the Stamp Ordinance;